

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of  
the Adult Foster Care License of  
Tina Lindell

**RECOMMENDED ORDER GRANTING  
THE DEPARTMENT'S MOTION  
FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Allan W. Klein pursuant to a Notice of and Order for Hearing dated October 9, 2002. On November 7, 2003, the Department of Human Services filed a Motion for Summary Disposition. Licensee did not submit a response in opposition to the motion.

Thomas D. Wedes, Assistant Isanti County Attorney, 555 18<sup>th</sup> Avenue S.W., Cambridge, Minnesota 55008, represented the Department of Human Services ("DHS" or "the Department").

Licensee, Tina Lindell, 34205 Helium Street, N.W., Princeton, Minnesota 55371, has appeared on own her behalf, without benefit of counsel.

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RECOMMENDED that the Motion for Summary Disposition filed by the Department of Human Services be GRANTED.

Dated: February 24, 2003.

S/ Allan W. Klein

---

ALLAN W. KLEIN

Administrative Law Judge

**NOTICE**

This Order is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommended Order of the Administrative Law Judge. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Recommended Order has been made

available to the parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155; telephone 651-296-2701, for further information regarding the filing of exceptions and the presentation of argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Recommended Order will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the Recommended Order and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

## **MEMORANDUM**

In this contested case proceeding, Tina Lindell has appealed the decision by the Department to revoke her adult foster care license. The revocation was based upon the disqualification of a person over 13 years of age from having direct contact with persons served in the program. The Department has moved for summary disposition on the grounds that there are no material issues of fact in dispute and it is entitled to disposition of this case in its favor as a matter of law. Summary disposition is the administrative equivalent of summary judgment.<sup>[1]</sup> Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.<sup>[2]</sup> A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>[3]</sup>

The moving party must demonstrate that no genuine issues of material fact exist.<sup>[4]</sup> If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.<sup>[5]</sup> The existence of a genuine issue of material fact must be established by substantial evidence; general averments are not enough to meet the nonmoving party's burden.<sup>[6]</sup> The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.<sup>[7]</sup> The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.<sup>[8]</sup>

## **Factual Background**

Based upon the materials submitted by the Department, it appears that the facts in this matter relevant to the Motion for Summary Disposition are as follows. Tina Lindell was licensed as an adult foster care provider in January 2000. A domestic incident between Licensee and her husband, Randall Lindell, occurred in April 2000. Each spouse sought an order for protection (OFP) against the other. Isanti County Social Services (County) sought an opinion from the Isanti County Attorney regarding the nature of the April 2000 incident. The County Attorney concluded that the preponderance of the evidence showed that Randall Lindell had committed an act of domestic abuse, equivalent to fifth degree assault.

Due to the domestic abuse finding, the Department concluded that Randall Lindell was disqualified from contact with persons served by programs, including adult foster care. Randall Lindell sought reconsideration of the disqualification. The disqualification was not set aside, but the Department granted a variance to allow continued presence of Randall Lindell at the licensed premises. The variance was conditioned on participation in therapy to control anger, addressing chemical dependency issues, and addressing marital issues. Licensee's adult foster care license was extended on January 1, 2001, conditioned on continued compliance with variance provisions.

In October 2001, Licensee informed the County that she was seeking a divorce and that Randall Lindell was no longer living in the licensed premises. At about this time, Licensee had requested a second OFP against Randall Lindell. The County met with Licensee and Randall Lindell in February 2002 to discuss the situation in the home. The County initiated a background check. The Department determined that Randall Lindell was disqualified based on the second OFP. Randall Lindell requested reconsideration of the disqualification on May 17, 2002.

On June 18, 2002, the Department concluded that the request for reconsideration should be denied. The County and the Department concurred that no variance should be granted at this time, since there had been noncompliance with the conditions on the prior variance. On October 18, 2002, Randall Lindell appealed his disqualification under the process established by Minn. Stat. § 256.045. An evidentiary hearing before Appeals Referee J. Philip Peterson was held on January 15, 2003. On May 27, 2003, Referee Peterson recommended that the disqualification be upheld. The Commissioner of Human Services ordered that the disqualification be upheld.<sup>[9]</sup> The findings of Referee Peterson noted that Randall Lindell was living at the licensed premises and he intended to remain at that residence.<sup>[10]</sup> The Commissioner's Order was not further appealed.

DHS revoked Licensee's adult foster care license and Licensee appealed that revocation. On October 9, 2002, DHS issued a Notice of and Order for Hearing setting this matter on before Administrative Law Judge Allan Klein. A hearing in this matter was scheduled for December 18, 2002. At the start of that hearing, Judge Klein

determined that this proceeding would be stayed pending resolution of the disqualification appeal.

On November 7, 2003, the Department filed a motion for summary disposition, relying upon the Commissioner's Order disqualifying Randall Lindell from direct contact with persons in care. Licensee made no filing in this matter and has not contacted the Administrative Law Judge.

DHS has presented facts that, even when viewed in a light most favorable to Licensee, show that there is no genuine issue of material fact that remains for hearing and that DHS is entitled to judgment as a matter of law.

Having made this factual presentation, the burden falls upon Licensee to show that facts remain in dispute that must be resolved at hearing, or that there is some legal basis preventing DHS from prevailing. Licensee has not made any response to the Department's motion. Licensee has not placed any facts in the record to suggest that any factual issue remains for hearing on Randall Lindell's disqualification, or that DHS is wrong about the law. Licensee has not met her burden.

There is no genuine issue of material fact remaining for hearing and the Department is entitled to prevail as a matter of law. Accordingly, it is recommended that the Department's order for revocation of the adult foster care license of Tina Lindell be affirmed.

A.W.K.

---

<sup>[1]</sup> Minn. R. 1400.5500 (K).

<sup>[2]</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03; Minn. R. 1400.5500 (K).

<sup>[3]</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W. 2d 804, 808 (Minn. App. 1984).

<sup>[4]</sup> *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

<sup>[5]</sup> *Highland Chateau*, 356 N.W.2d at 808; *Hunt v. IBM Mid America Employees*, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>[6]</sup> *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

<sup>[7]</sup> *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

<sup>[8]</sup> See *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. App. 1985).

<sup>[9]</sup> ***In the Appeal of Randall Lindell, for Disqualification from Direct Contact with Persons Served by Human Services Programs***, Decision of State Agency on Appeal, at 6.

<sup>[10]</sup> *Id.*, at 4 and 6.